attempt to commit larceny though there is no property to steal. *Commonwealth* v. *McDonald*, 5 Cush. (Mass.) 365. On the other hand, text writers seem to agree that if a person shoots at a shadow thinking it to be an enemy, it is not an attempt to murder. See BISHOP, CR. LAW, § 742; WHARTON, CR. LAW, § 186. The reason sometimes given is that the real intent is to shoot at the shadow. As a matter of fact, however, most acts are accompanied by many different intents. The act of shooting involves, among others, intents to aim, to pull the trigger, and to set off the load. In the case just supposed the intent to kill an enemy is no less real than the intent to shoot at the shadow. The person doing the shooting would be very much surprised to be told that he was without the evil intent. See *Rex* v. *Coe*, 6 C. & P. 403. Further, the larceny cases are very difficult to explain unless the necessary intent is regarded as being present. It is believed that the real test should be the same as that in the first three classes of cases already mentioned — namely, whether the act done is of sufficient importance for the law to notice it. By this test, the distinction between putting the hand into an empty pocket or breaking into an empty building with intent to steal, either of which is an attempt, and shooting at a shadow, which is not an attempt, is that in the former cases force is actually brought to bear against the very person or object against which it was intended to be used, while in the latter no force is brought to bear or comes near being brought to bear upon the intended victim. If this explanation be correct, it should follow that if, in the case of shooting at a shadow, the person intended to be injured is near enough to the thing mistaken for him when the shot is fired, an attempt is made out. It was virtually so decided in *People* v. *Lee Kong*, 95 Cal. 666. A recent Missouri case is to be sustained upon the same principle. The prisoner discharged a pistol at a bed upon which he thought the prosecutor was lying. Though the prosecutor was in fact in another part of the house at the time, the defendant was held guilty of an attempt. *State* v. *Mitchell*, 71 S. W. Rep. 175.

DOCTRINE OF LOST GRANT. — The law has always recognized the necessity of allowing the acquisition of an easement by long continued use. At first, immemorial use was held to be necessary and the coronation of Richard I. was taken as the limit of legal memory. See *Angus* v. *Dalton*, 3 Q. B. D. 85. This unsatisfactory rule was later modified by the doctrine of lost grant. By this doctrine all easements are supposed to arise in grant, but if the easement has been used for the period required by the statute of limitations to gain a title to lands by adverse possession, then the use is presumed to have commenced under a valid grant which has since been lost. See *Angus* v. *Dalton*, *supra*. This theory has been a source of considerable confusion in the law, for many courts have treated the lost grant as though it were to some extent a grant in fact. Thus in a recent Virginia decision the court held that the presumption of a grant to the plaintiff of a right of way over the defendant's land might be rebutted by showing that the defendant continually protested against the plaintiff's use and therefore never acquiesced in it. *Reed* v. *Garnett*, 43 S. E. Rep. 182. If the lost grant is considered as a grant in fact, such evidence may well show that no such grant was ever made. But the lost grant is admittedly a fiction, and to be of any value should be treated purely as a presumption of law. *Tracy* v. *Atherton*, 36 Vt. 503; *Reimer* v. *Stuber*, 20 Pa. St. 458.

The court in the principal case states that for the acquisition of a right by prescription it is necessary to show the servient owner's acquiescence. The great majority of the cases also use this word as describing one of the necessary ingredients of prescription. *Rooker* v. *Perkins*, 14 Wis. 79. But by the weight of authority no greater acquiescence is necessary than in the analogous cases where title to land is acquired by adverse possession. In short, the servient owner must be deemed to acquiesce if he remains inert when he knows of the plaintiff's claim and could prevent the acquisition of the right. *Daniel* v. *North*, 11 East, 372; *Webb* v. *Bird*, 13 C. B. N. S. 841; *Treadwell* v. *Inslee*, 120 N. Y. 458. It is difficult to see how acquiescence could be regarded as containing an affirmative element without becoming practically equivalent to permission. Though permission would be most consistent and most in harmony with the theory of an actual lost grant, yet it is well established that use of an easement by the permission of the servient owner will never ripen into a legal right. *Pierce* v. *Selleck*, 18 Conn. 321; *Esling* v. *Williams*, 10 Pa. St. 126.

There is some authority to support the principal case on the ground that verbal objection constitutes a sufficient interruption of the easement to prevent the gaining of a legal right. *Powell* v. *Bagg*, 74 Mass. 441. These cases go on the theory that a slight interruption should be sufficient to rebut the presumption of a grant. But this is opposed by the weight of authority which requires an actual interruption by the servient owner either through the commission of some suable act or through an action carried to a successful issue. *Kimball* v. *Ladd*, 42 Vt. 747; *Lehigh, etc., Co.* v. *McFarlan*, 43 N. J. Law 605. These cases seem correct, since if verbal objections amounted to interruptions the acquisition of any prescriptive rights would be well-nigh impossible.

Many courts have abandoned the doctrine of lost grant, and hold that rights by prescription are acquired strictly on the analogy to the acquisition of title under the statute of limitations. *Mueller* v. *Fruen*, 36 Minn. 273; *Okeson* v. *Patterson*, 29 Pa. St. 22. Such a rule has the merit not only of attaining fairer results, but also of being based upon fact rather than upon fiction.

RIGHTS OF SURETY IN SECURITIES HELD BY CO-SURETY. — While the right to contribution as between co-sureties is now recognized at law, its equitable origin is apparent in that it is still regulated not by strict rules of law, but by considerations of practical justice and of business convenience. *Deering* v. *Winchelsea*, 2 B. & P. 270. A departure from the principles usually adopted to secure those ends occurs in a late North Carolina decision. One of several sureties on a sheriff's bond had, before becoming surety, obtained security from the sheriff. Although it did not appear that the co-sureties knew of the transaction, no actual fraud toward them was shown. It was sought to bring the security into hotchpot, for the common benefit of all the sureties, but the court held that the one to whom it had been given might use it for his own separate indemnity. *McDowell County Com'rs* v. *Nichols et al.*, 42 S. E. Rep. 938.

Where security has been given by the principal debtor to one of several sureties after the suretyship relation has been formed, but before payment of the principal debt, the authority is overwhelming that the security enures to the common benefit, even though the result be to deprive the surety, who obtained the security, of the fruits of his diligence. *Berridge* v. *Berridge*, 44